INTERVIEW SUMMARY

A telephone interview was held on November 10, 2009. Examiner Yehdega Retta, Attorney Larry Henneman, and Inventor Philip Donian participated in the interview. Applicants appreciate Examiner Retta extending the interview, particularly after a final rejection.

Mr. Henneman provided a brief overview of Applicants' invention. In particular, Mr. Henneman pointed out that according to at least one embodiment of Applicants' invention, a user could freely alter the presentation of media file content. Ads could be then be presented to the user based on the altered presentation of the media file content.

Next, the Knepper et al. reference was discussed. Mr. Henneman and Mr. Donian pointed out that the system of Knepper et al. did not provide the advantages of Applicants' invention. Rather, in Knepper et al., media file content and ad file content are presented to a user according to a text file delivered from a server. As shown in Fig. 4 of Knepper et al., no user intervention is allowed when the video and ad clips are being presented.

In view of the differences between the invention and the prior art, several examples of claim language were offered by Mr. Henneman. Examiner Retta also offered her opinions and suggested claim language. In particular, Examiner Retta characterized a distinguishing feature of Applicants' invention as presenting the ad files based on an amount of media file content presented to the user.

No agreement was reached with respect to the patentability of any claims. Examiner Retta indicated that she needed additional time to review the prior art of record and to do an updated search. Applicants agreed to file an amendment consistent with the claim language discussion, along with a Request for Continued Examination.

Applicants again thank Examiner Retta for extending the interview and for the cooperative nature of the interview.

REMARKS

These remarks are in response to the final Office Action dated May 20, 2009, which has a shortened statutory period for response set to expire August 20, 2009. A three-month extension, to expire November 20, 2009, is requested in a petition filed herewith. A request for continued examination (RCE) is also filed herewith.

Claims

Claims 1-122 are pending in the above-identified application. Claims 1-122 are rejected over prior art. Claims 1, 20, 50, 51, 62, 81, 102, 104, 107, and 117 are amended, and Claims 123-137 are added. Claims 2-19, 21-49, 52-61, 63-80, 82-101, 103, 105-106, 108- 116, and 118-122 remain as filed or previously presented. Reconsideration is requested.

Rejections Under 35 U.S.C. § 112

Claims 3, 20, 50-52, 54, 71, 117 and 118 are rejected under 35 U.S.C. § 112, second paragraph.

Claim 3

Regarding Claim 3, the Examiner writes:

> Claim 3 recites "said step of receiving at least one ad file includes receiving a plurality of ad files". It is unclear how receiving of one file can include receiving more than one file.

Applicant respectfully traverses.

Claim 3 depends directly from Claim 1, which recites "receiving at least one ad file." The clear language of Claim 1 covers receiving either one ad file or a plurality of ad files. For example, if four ad files are received, then at least one ad file is received. Claim 3 narrows this limitation ("receiving at least on ad file") by requiring that a plurality of ad files be received.

There is nothing grammatically incorrect or inconsistent in the language of Claim 3. Claim 3 clearly references a limitation of Claim 1 and further restricts that limitation. Therefore, Applicants respectfully request reconsideration and withdrawal of the rejection of Claim 3 under 35 USC §112, second paragraph.

Claims 20, 54, and 71

The Examiner writes:

> Claim 20 also recites "said step of receiving at least one ad file includes receiving a plurality of ad files" and "said step of receiving input indicative of user's selection of at least one media file includes receiving a list of media files." It is unclear how receiving of one file can include receiving more than one file, and step of receiving input indicative of user's selection of one media file can include receiving a list of media files. Claims 54 and 71 are also rejected for the same reason.

Applicants respectfully traverse, because Claims 20, 54, and 71 are clear and definite.

Initially Applicants point out that independent Claim 1 recites "receiving <u>at least one</u> ad file" and "receiving input indicative of a user's selection of <u>at least one</u> media file." Receiving at least one ad file can include receiving a plurality of ad files as follows. If five ad files are received, then at least one ad file has been received (five being greater than one) and a plurality of ad files have been received (five is a plurality). Similarly, if a user provides a list of five media files, then the user has provided input indicative of at least one media file (five being greater than one).

For at least these reasons, Applicants assert that the language of Claims 20, 54, and 71 is not unclear. Therefore, Applicants respectfully request reconsideration and withdrawal of the rejections of Claims 20, 54, and 71 under 35 USC §112, second paragraph.

Claims 51, 52, 117, and 118

The Examiner writes:

> Claim 51 recites a method according to Claim 50, wherein said step of presenting said media file content to said user includes: decrypting said media file. Claim 50 however does not recite the media being encrypted therefore, it is unclear how unencrypted file can be decrypted. Claims 52, 117 and 118 are also rejected for the same reason.

Claims 51 is amended to explicitly recite "receiving a copy of said media file in an encrypted format," and Claim 117 is amended to explicitly recite "receiving a copy of said ad file in an encrypted format." Applicants assert that these amendments eliminate any perceived lack of clarity and respectfully request reconsideration and withdrawal of the rejections.

Claim 61

The Examiner writes:

> Claim 61 recites "relaxing the requirements for presenting
> said ad file for the remainder of a single media presentation session
> after said ad file has been presented." Claim 1 recites receiving at
> least one ad file, selecting at least one media file, storing said
> media file, and presenting said stored media file content and said
> stored ad file content. Therefore, it is unclear what applicant
> meant by relaxing the requirement for presenting said one ad file
> with one media file.

Applicants respectfully traverse.

Applicants have carefully reviewed Claim 61 and base Claim 1. Applicants cannot identify any inconsistency that would result in a lack of clarity in Claim 61. As the Examiner points out, Claim 1 requires "presenting said stored media file content and said stored ad file content." Claim 61 recites "requiring that said ad file content be presented in order to present said media file content; and relaxing the requirement for presenting said ad file for the remainder of a single media presentation session <u>after said ad file has been presented</u>." (emphasis added) Applicants respectfully assert that relaxing the requirement for presenting the ad file after the ad file has been presented is not inconsistent with the requirement of Claim 1 to present the ad file content. For these reasons, Applicants respectfully request reconsideration and withdrawal of the rejection of Claim 61 under 35 USC §112, second paragraph.

Claims 20 and 50

Claims 20 and 50 are amended to correct the antecedent basis problem. In particular, "receiving a copy of said media file" has been changed to "receiving said media file." Withdrawal of the rejections of Claims 20 and 50 is respectfully requested, in view of the amendments.

For the above reasons Applicants request reconsideration and withdrawal of all rejections under 35 U.S.C. § 112.

Rejection Under 35 U.S.C. §101

Claims 107 and 108 are rejected under 35 U.S.C. § 101 as being directed to nonstatutory subject matter. The Examiner writes:

> Claim 107 is not directed to a process, as there is no method step; it is not directed to system, as there is no system component. The invention seems to be directed toward an article of manufacture, however, signals, data structures or computer programs not embodied in a computer readable media executable by a computer are descriptive material per se and are not statutory because they are not capable of causing functional change in a computer. Data structure or signal not claimed as embodied in computer-readable media is descriptive material per se and is not statutory because they are neither physical nor statutory process. Such claimed signals do not define any structural and functional interrelationships between a computer code and other claimed elements of a computer, which permit the computer's program to be realized (see MPEP section 2106). The amended claim recites a data structure comprising of codes or fields which is just software or program per se.

Applicant respectfully traverses.

MPEP §2106.01 clearly states: "When functional descriptive material is recorded on some computer-readable medium, it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized."

Contrary to the Examiner's assertion, Claim 107 does not claim a data structure per se. Rather, the data structure and code are claimed as being embodied in an electronically-readable medium. Moreover, the data structure of Claim 107 is clearly functional. The data structure associates a media with an ad requirement, which permits an electronic device to display ad files and media files in a predetermined proportion. In addition to the data structure elements, Claim 107 also includes functional code that causes the electronic device to present the content of the media file to a user.

Because Claim 107 includes functional data structure and code embodied in an electronically-readable medium, Claim 107 is directed to statutory subject matter. In addition, Claim 107 is amended herein for further clarification, and now recites "An electronically-readable storage medium." Claim 108 depends from Claim 107 and claims statutory subject matter for at least the same reasons as Claim 107.

For at least the foregoing reasons, Applicant respectfully requests reconsideration and withdrawal of the rejections under 35 USC §101.

Rejections Under 35 U.S.C. §§ 102 and 103

Claims 1-6, 9-14, 17-28, 30-38, 41, 44-67, 70-85, 89-11, and 114-116 are rejected under 35 U.S.C. § 102 (e) as being anticipated by US 2001/0042249 (Knepper et al.). Claims 7, 8, 29, 39, 40, 42, 43, 112, and 113 are rejected under 35 USC §103(a) as being upatentable over Knepper in view of U.S. 6,950,804 (Strietzel). Claims 15, 16, 68, 69, and 86-88 are rejected under 35 USC §103(a) as being upatentable over Knepper in view of US 6,588,015 (Eyer, et al.). Claims 117-122 are rejected under 35 USC §103(a) as being upatentable over Knepper in view of US 7,400,729 (Dunstan, et al.).

All of the independent claims are amended to obviate the current rejections. The amendment of the claims is intended to expedite the allowance of the present application and is not an admission with respect to the propriety of the rejections.

Claims 1-61, 109, 111-114, 117-119, and 121

Claim 1 is amended herein to now recite (in part):

altering, in the media player, presentation of said content of said at least one media file responsive to input from said user; and basing the presentation of said ad file content at least in part on an amount of said media file content actually presented to said user.

Knepper et al. does not disclose these limitations of Claim 1. Instead, in Knepper et al., the order of presentation and the location of the ads is determined at the server 207 and communicated to the client system 203 via an instruction set (e.g., a text file). The presentation of ad file content is then based solely on the instruction set. Moreover, the presentation of the media file cannot be altered in the media player. As shown in Fig. 4 of Knepper et al., once the presentation of a particular media file has begun, no user intervention is allowed.

In contrast, according to the invention of Claim 1, the presentation of the media file content can be altered in the media player responsive to input from the user. In addition, the presentation of ad file content is based at least in part on the amount of media file content actually presented to the user. Thus the presentation of the ad file content can be changed in

response changes in the presentation of the media files by the user. This flexibility is not present in the system of Knepper et al.

Claim 1 is distinguished over Knepper et al. for at least the foregoing reasons. Claims 2-61, 109, 111-114, 117-119, and 121 depend, either directly or indirectly, from Claim 1 and are, therefore, distinguished over the cited reference for at least the same reasons as Claim 1.

Claim 62-80, and 115

Claim 62 is amended herein to now recite (in part):

allow, in the media player, said user to alter the presentation of said
    media file content; and
base the presentation of said ad file content at least in part on an
    amount of media file content actually presented to said user.

As indicated above, the system of Knepper et al. does not allow the user to alter the presentation of the media file content and does not base the presentation of the ad file content on the amount of media file content actually presented to the user. Therefore, Claim 62 distinguishes over the cited reference. Claims 63-80 and 115 depend, either directly or indirectly, from Claim 62 and are, therefore, distinguished over the cited reference for at least the same reasons.

Claims 81-101, 110, 116, 120, and 122

As amended herein, Claim 81 recites (in part):

said media player responsive to input from said user is operative to
    allow the alteration of the presentation of said media files; and
said intersplicer is further operative to provide said control signals to
    alter the presentation of said content of said ad files based on an
    amount of said content of said media files actually presented to
    said user.

As indicated above, the system of Knepper et al. does not allow the alteration of the presentation of the media files responsive to input from the user and does not base the presentation of the ad file content on the amount of media file content actually presented to the user. Therefore, Claim 81 distinguishes over the cited reference. Claims 82-101, 110, 116, 120, and 122 depend, either directly or indirectly, from Claim 81 and are, therefore, distinguished over Knepper et al. for at least the same reasons.

Claims 102 and 103

As amended herein, Claim 102 recites (in part):

means for allowing said user to resequence said presentation media; and
means for altering the presentation of said ads based at least in part on an
amount of said presentation media actually presented.

Knepper et al. does not disclose allowing said user to resequence said presentation media in combination with altering the presentation of the ads based on an amount of the presentation media actually presented. For at least these reasons, amended Claim 102 distinguishes over Knepper. Claim 103 depends from Claim 102 and is, therefore, distinguished over the cited reference for at least the same reasons.

Claims 104-106

As amended herein, Claim 104 now recites (in part):

associating an ad requirement with each of said media files, said ad
requirement based at least in part on an amount of content of said
media file actually presented to said user;
providing a media player operative to combine and present the content
of said media files with the content of said ad files, said media
player facilitating control of the presentation of said media file
content by consumers and presenting said ad files based on said ad
file requirements.

Knepper et al. does not disclose an ad requirement based at least in part on an amount of content of the media file actually presented to the user in combination with a media player facilitating control of the presentation of the media file content by consumers. Therefore, Claim 104 distinguishes over Knepper et al. Claims 105 and 106 depend from Claim 104 and are, therefore, distinguished over Claim 104 for at least the same reasons.

Claims 107-108

As amended herein, Claim 107 now recites (in part):

> a second field containing data indicative of an ad requirement associated with said media file, said ad requirement being based at least in part on an amount of content of said media file actually presented; and
> further including code for causing an electronic device to present said content of said media file to a user, to allow said user to alter the presentation of said media file content, and to monitor said amount of content of said media file actually presented to determine compliance with said ad requirement.

Knepper et al. does not disclose an electronically-readable storage medium having a data structure stored therein that includes data indicative of an ad requirement based at least in part on an amount of media file content actually presented. Even more particularly, Knepper et al. does not disclose the claimed data structure in combination with code that causes an electronic device to allow a user to alter the presentation of the media file content and to monitor the amount of media file content actually presented to determine compliance with the ad requirement. For at least these reasons, amended Claim 107 distinguishes over Knepper et al. Claim 108 depends from Claim 107 and distinguishes over the cited reference for at least the same reasons.

New Claims 123-137

New Claims 123-127 depend from Claim 1 and are, therefore, distinguished over the prior art of record for at least the same reasons as Claim 1. New Claims 128-132 depend from Claim 62 and are, therefore, distinguished over the prior art of record for at least the same reasons as Claim 62. New Claims 133-137 depend from Claim 81 and are, therefore, distinguished over the prior art of record for at least the same reasons as Claim 81.

Support for new Claims 123-137 can be found in Applicants original disclosure at least at Page 12, Lines 10-12; Page 21, Lines 18-21; and Page 27, Lines 12-16.

For the foregoing reasons, Applicants believe Claims 1-137 are in condition for allowance. Should the Examiner undertake any action other than allowance of Claims 1-137, or if the Examiner has any questions or suggestions for expediting the prosecution of this application, the Examiner is requested to contact Applicants' attorney at (269) 279-8820.

Respectfully submitted,

November 14, 2009   /Larry E. Henneman, Jr./

Date:_____

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Date:___November 14, 2009_____   _____/Larry E. Henneman, Jr./_____
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